THE HON'BLE SRI JUSTICE V.ESWARAIAH

Date:07-02-2006.

WRIT PETITION NO. 2320 OF 2006

Between:

Amardeep Show Rom, rep.by Partner Sirish H.Radia & others.

…Petitioners.

And

State of A.P., Rep.by its Principal Secretary, Housing and Municipal Administration, Secretariat Buildings, Hyderabad & others.

…Respondents.

ORDER:

The petitioners seek to issue a writ of mandamus, declaring the action of the respondents in proceeding to demolish the structures before issuing any notice calling upon the owners and occupiers for removal of the structures, which are in ruinous and dangerous condition.

It is stated that the petitioners are the owners of various shops of Pushpanjali Complex, situated at Koti, Hyderabad. It is stated that a fire accident took place in the said complex on 5-2-2006 Sunday morning, burning the complex. It being a Sunday, as the shops were closed, there was no human loss, but there is a loss of property movable and immovable in crores.

It is stated that if the building is in dangerous and precarious condition, the respondents shall follow due procedure prescribed in law directing the owners and occupiers of the building to pull down or remove or repair the same to prevent all cause of danger. But, without issuing any notice either under Section 456(1) or 456(2) and under Section 459 of the Hyderabad Municipal Corporations Act, 1955, the respondents are proceeding to demolish the said building.

On instructions, the learned counsel appearing for the first respondent submits that Pushpanjali Complex (Ground + 8 floors) is located opposite to Osmania Medical College, Koti, caught fire in the morning of 5-2-2006. Fire was brought under control by the Fire Department after fighting 6 to 8 hours. The Executive Engineer, Division VI, Municipal Corporation, Hyderabad inspected the said building pursuant to the instructions of the District Collector, Hyderabad and authorities of the Municipal Corporation, Hyderabad and observed that15 to 20 columns in the first floor and the same

number of columns in the second floor on the South East side of the building are badly damaged and roofs of first and second floors are severely damaged and collapsed at many places. Hence, an opinion has been given, stating that the building is not fit for use by public. Pursuant to the said preliminary report submitted by the Assistant Executive Engineer, Deputy Executive Engineer-Sub Division-I and Executive Engineer-Division VI, Municipal Corporation, Hyderabad, the District Collector, Hyderabad issued a Press Note on 5-2-2006 calling upon the occupants of the said building informing them to collect their belongings within 12 hours of the publication of the Press Note i.e., by 6.00 P.M., on 6-2-2006. It is also stated that the Executive Engineer opined that the building is not fit for use by the public.

Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the first respondent.

Under Section 456(1) of the Hyderabad Municipal Corporations Act, 1955, if it appears to the Commissioner of Municipal Corporation Hyderabad (MCH) that any structure of any building, wall or other structures etc., is in ruinous condition or likely to fall, or is in any way dangerous to any person occupying, resorting to or passing by, such structure or any other structure or place in the neighbourhood thereof, then the Commissioner may, by written notice, require the owner or occupier of such structure to pull down or to remove or to repair to prevent all cause of danger.

Under Section 456(2), if the Commissioner thinks fit, he may require the owner or occupier by the said notice to pull down the structures.

It is stated that no notice either under Section 456(1) or 456(2) of Hyderabad Municipal Corporations Act has been issued requiring the occupiers or owner of the said building to pull down or remove the structures which are in ruinous and dangerous condtion.

Under Section 456(3) of the Hyderabad Municipal Corporations Act, the Commissioner is also empowered to take required steps to arrest

the danger. Under Section 459 of the Hyderabad Municipal Corporations Act, the Commissioner shall issue a notice under Sub Sections (1) and (2) of Section 456, giving the owner a reasonable opportunity of stating any objection.

The learned counsel appearing for the petitioners submits that they have not been allowed to take their belongings and no notice has been issued to them, requiring the owner or occupier either to pull down or remove so as to enable them to file any objections. It is stated that 10 hours notice is enough for them to take their belongings.

Having regard to the facts and circumstances of the case,
the respondents are directed to issue a notice specifying the ruinous condition/precarious condition of the structures pursuant to the fire accident, requiring the owners or occupiers to pull down the building within 10 hours from the time of service of notice or in lieu of individual notices issue a notification in two daily news papers i.e., one Telugu daily Eenadu and one in English daily Deccan Chronicle. If the said notice is not complied with, then it is open for the respondents to pull down the ruinous structures forthwith in the interest of the occupiers, neighbours and public to prevent the further danger. It is also open for the respondents to prevent the occupiers, public and owners from entering into the said premises.

The writ petition is disposed of accordingly. No costs.

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V.ESWARAIAH, J

Date: 7-2-2006.

Note: Furnish copy today i.e.07-02-2006

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Shr/Dsk.